Filed 3/22/10 In re J.C. CA4/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re J.C., a Person Coming Under the Juvenile Court Law.	
RIVERSIDE COUNTY DEPARTMENT OF PUBLIC SOCIAL SERVICES, Plaintiff and Respondent, v. U.C., Defendant and Appellant.	E049091 (Super.Ct.No. JUV096704) OPINION

APPEAL from the Superior Court of Riverside County. Samuel Diaz, Jr., Judge. Affirmed.

Maryann M. Milcetic, under appointment by the Court of Appeal, for Defendant and Appellant.

Pamela J. Walls, County Counsel, and Anna M. Deckert, Deputy County Counsel, for Plaintiff and Respondent.

Appellant U.C. (Father) appeals the termination of his parental rights under Welfare and Institutions Code section 366.26[1] as to his minor son, J.C. Father contends the order terminating his parental rights should be reversed because there is insufficient evidence to support the juvenile court's finding of adoptability pursuant to section 366.26, subdivision (c)(1).

FACTUAL AND PROCEDURAL BACKGROUND

J.C., who recently had his 11th birthday, has been the subject of two separate juvenile dependency proceedings. In the first dependency proceeding, a petition was filed by the San Bernardino County Department of Children Services on January 15, 1999, shortly after J.C.'s birth; mother had failed to reunify with three older children and J.C.'s older brother was a dependent at that time and had been born addicted to heroin. This original proceeding was terminated on February 2, 2001, when the juvenile court awarded sole custody to Father.[2]

The second juvenile dependency petition was filed by the Riverside County Department of Public Social Services (DPSS) on June 16, 2006, alleging failure to protect (§ 300, subd. (b)) and no provision for support (§ 300, subd. (g)). According to the detention report, Father served 40 days in jail for traffic violations beginning in April 2006. He was released on May 2, 2006. While Father was incarcerated, he left J.C. in

[1] All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

[2] The details of the prior proceeding are outlined in the parties' briefs but are not relevant to the current appeal. The current appeal only involves Father and J.C. based on the results of the subsequent juvenile dependency proceeding.

the care of his employer, G.E. G.E. reported that Father had provided lawn care services to him for the previous seven years. After his release, Father continued to leave J.C. in the care of G.E., but J.C. sometimes visited with Father on weekends. During this time, Father was living in his vehicle and/or in a motel. After visits with Father, G.E. reported J.C. would be returned to him with health problems and would appear dirty, withdrawn, angry, and violent. G.E. also told the social worker he had incurred significant dental expenses for J.C. while he was in his care to relieve pain from excessive tooth decay and infection. On May 24, 2006, Father was arrested again and charged with criminal offenses, including rape, kidnapping, and assault with a deadly weapon.

J.C. was formally placed with G.E. At the jurisdictional hearing on August 10, 2006, the court found the allegations in the petition to be true and declared jurisdiction over J.C. Father waived reunification services with the understanding that guardianship would be pursued as the permanent plan. The court selected legal guardianship as the permanent plan and set a permanency hearing pursuant to section 366.26.

J.C. initially visited Father in jail. However, visits were suspended by the court on November 2, 2006, because J.C. was upset during the visits and acted out aggressively at school after visitation.

In a report prepared for a further review hearing on November 15, 2006, the social worker stated G.E. was interested in actively pursuing adoption of J.C. if Father was convicted of the pending criminal charges and incarcerated for a significant period of time. In a later report prepared for a hearing on March 15, 2007, the social worker changed the recommendation for the permanent plan from legal guardianship to

termination of parental rights and adoption. The social worker identified G.E. as J.C.'s prospective adoptive parent and attached a preliminary adoption assessment to the report. On March 15, 2007, the juvenile court rejected the recommendation to change the permanent plan to adoption and appointed G.E. as J.C.'s legal guardian.

Although the social worker continued at subsequent review hearings to recommend termination of parental rights and a change to adoption as the permanent plan, the juvenile court was reluctant to consider terminating parental rights until the criminal charges against Father were resolved. At a review hearing on February 25, 2009, the court was advised Father was convicted on five counts but had not yet been sentenced. The court then confirmed adoption as the permanent plan and set a section 366.26 hearing to consider the termination of parental rights. The social worker later reported Father was sentenced to prison for 14 years to life.

On June 25, 2009, the court held a final section 366.26 hearing. At that time, the court terminated parental rights and found by clear and convincing evidence that J.C. was likely to be adopted.

DISCUSSION

Father contends the juvenile court's finding of adoptability is unsupported by substantial evidence because the record indicates J.C. was not generally or specifically adoptable under section 366.26, subdivision (c)(1). According to Father, J.C. had significant mental health issues and behavioral problems; no one but G.E. had expressed

an interest in adopting him and it was unclear whether G.E. could pass an adoptive home study.[3]

"When reviewing a court's finding a minor is adoptable, we apply the substantial evidence test. [Citations.] If, on the entire record, there is substantial evidence to support the findings of the juvenile court, we must uphold those findings. We do not pass on the credibility of witnesses, attempt to resolve conflicts in the evidence or weigh the evidence. [Citations.] Rather, our task is to determine whether there is substantial evidence from which a reasonable trier of fact could find, by clear and convincing evidence, that the minor is adoptable. [Citation.] The appellant has the burden of showing there is no evidence of a sufficiently substantial nature to support the finding or order. [Citation.]" (*In re R.C.* (2008) 169 Cal.App.4th 486, 491.)

Under section 366.26, subdivision (c)(1), the juvenile court "shall terminate parental rights and order the child placed for adoption" if it finds "by a clear and

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[3] DPSS contends Father waived his right to challenge the court's adoptability finding because he essentially challenges the results of the criminal background check outlined in the adoption assessment, but he failed to object to the adequacy of the assessment in the juvenile court. In support of this argument, DPSS relies on *In re Brian P.* (2002) 99 Cal.App.4th 616, 622 (*Brian P.*). *Brian P.* states in part as follows: "[W]hile a parent may waive the objection that an adoption assessment does not comply with the [statutory] requirements . . . a claim that there was insufficient evidence of the child's adoptability at a contested hearing is not waived by failure to argue the issue in the juvenile court." (*Id*. at p. 623.) The *Brian P.* decision was favorably cited by the California Supreme Court in *People v. Butler* (2003) 31 Cal.4th 1119, 1126, footnote 4, for the proposition that a challenge to the sufficiency of the evidence to support an adoptability finding can be raised on appeal even though there was no objection in the trial court. As we understand it, Father's appeal is not simply an attack on the content of the adoption assessment, but an overall attack on the sufficiency of the evidence to support the adoptability finding. We therefore address the merits.

convincing standard, that it is likely the child will be adopted." "The fact that the child is not yet placed in a preadoptive home . . . shall not constitute a basis for the court to conclude that it is not likely the child will be adopted." "Although a finding of adoptability must be supported by clear and convincing evidence, it is nevertheless a low threshold: The court must merely determine that it is 'likely' that the child will be adopted within a reasonable time. [Citations.]" (*In re K.B.* (2009) 173 Cal.App.4th 1275, 1292 [Fourth Dist., Div. Two].)

Whenever the juvenile court sets a selection and implementation hearing pursuant to section 366.26 to consider the termination of parental rights, the responsible agency is directed to prepare an assessment that is used by the court to determine whether the child is adoptable. (*In re Valerie W.* (2008) 162 Cal.App.4th 1, 11.) The assessment must address a number of specific subjects, including the child's medical, developmental, scholastic, and emotional status; an analysis of the likelihood of adoption; a preliminary assessment of any identified prospective adoptive parent or legal guardian; the character and duration of any relationship to a prospective adoptive parent or legal guardian; and a statement by the child concerning placement and adoption. (*Id*. at pp. 11-12.) The court must also consider other relevant evidence presented by the parties. (*Id*. at p. 12.)

"The issue of adoptability requires the court to focus on the child, and whether the child's age, physical condition, and emotional state make it difficult to find a person willing to adopt. [Citations.]" (*Brian P., supra*, 99 Cal.App.4th at p. 624.) "Usually, the fact that a prospective adoptive parent has expressed interest in adopting the minor is evidence that the minor's age, physical condition, mental state, and other matters relating

to the child are not likely to dissuade individuals from adopting the minor. In other words, a prospective adoptive parent's willingness to adopt generally indicates the minor is likely to be adopted within a reasonable time either by the prospective adoptive parent *or by some other family*. [Citation.]" (*In re Sarah M.* (1994) 22 Cal.App.4th 1642, 1649-1650.) (Italics in original.) Because the focus of the inquiry is on the child, "a parent whose right to care and custody of the child is at stake in a section 366.26 hearing may not inquire about the 'suitability' of a potential adoptive family because the family's suitability to adopt is irrelevant to the issue whether the minors are likely to be adopted. [Citation.]" (*Id*. at p. 1650.) There is a narrow exception to the general rule when a child who might be considered unadoptable because of age, poor physical health, physical disability or emotional instability, is likely to be adopted solely because a prospective adoptive family is willing to adopt. (*Ibid*.) Under these circumstances, "an inquiry may be made into whether there is any legal impediment to adoption by that parent. . . . In such cases, the existence of one of these legal impediments to adoption is relevant because the legal impediment would preclude the very basis upon which the social worker formed the opinion that the minor is likely to be adopted. [Citation.]" (*Ibid*.)

The record in this case simply does not support Father's contention J.C. was not generally adoptable because of significant mental health issues and behavioral problems. J.C. was formally placed with G.E. on June 14, 2006, and had informally been living with G.E. prior to that time. Father's parental rights were not terminated until June 25, 2009, when J.C. had been living with G.E. for more than three years. Initially, G.E. reported J.C. displayed aggressive and angry behavior. G.E. also reported J.C. acted aggressively

at school after visits with Father in jail, which led to suspension of further visitation. In a report signed on February 21, 2008, the social worker reported J.C. "has trouble controlling his temper and at times can become angry and violent towards people and property." In addition, he had been diagnosed with post traumatic stress disorder, oppositional defiant disorder, conduct disorder, and attention deficit hyperactivity disorder. At that time, he was receiving weekly mental health services and was taking medications.

Over time, these issues improved remarkably through counseling, therapy, and medication. In a report signed January 30, 2009, the social worker stated J.C.'s behavior and emotional status had "improved greatly over the past approximate three years and appears to be stable at this time." J.C. made additional, positive progress during the subsequent reporting period. By that time, J.C. was 10 years old. His defiant behaviors had "drastically decreased," and he was better able to handle frustration and to think more logically and rationally. Under these circumstances, we simply cannot conclude there are significant mental health or behavioral issues that could impede adoption.

Throughout the record, there is other evidence of J.C.'s overall good health, academic success, and appealing characteristics, which all support the court's adoptability finding. For example, in the report signed June 3, 2009, the social worker described J.C. as a friendly, active, "healthy child" with no medical concerns, who was "developmentally on target." He reportedly enjoyed activities such as learning to speak French, playing sports, playing musical instruments, singing, playing video games and traveling. At that time, he was enrolled in the fourth grade, "received straight A's," and

had perfect attendance. Some of these appealing characteristics were also included in the adoption assessment the court relied on in reaching its adoptability finding. In addition, the record indicates J.C. "is deeply attached" to G.E., refers to him as "Dad," and has expressed a desire to be adopted by G.E.

As a prospective adoptive parent, G.E.'s commitment to J.C. and his willingness to adopt are further evidence of adoptability. We dismiss Father's contention it was unclear whether G.E. could ultimately pass an adoption home study as an unsupported attack on the suitability of a potential adoptive parent. As outlined *ante*, the suitability of a potential adoptive parent is not relevant to whether a dependent child is likely to be adopted when parental rights are terminated.

In sum, we cannot disagree with the juvenile court's apparent conclusion J.C. is generally adoptable under section 366.26, subdivision (c)(1). Substantial evidence in the record supports this conclusion. Based on the record, it is therefore likely J.C. will be adopted within a reasonable time of the termination of parental rights.

We also reject Father's reliance on *In re Jerome D.* (2000) 84 Cal.App.4th 1200. The *Jerome D.* case is easily distinguished on the facts. The prospective adoptive parent in *Jerome D.* was the mother's former boyfriend with whom the child had been placed. The prospective adoptive father had a history of domestic violence in the presence of children that resulted in three prior convictions for domestic violence related crimes. In addition, he " 'was listed as a perpetrator' " in a child abuse database because he emotionally abused his nephews and niece. (*Id*. at p. 1203.) The adoption assessment lacked important information about the child's history, such as details about his mental

and physical health, the care and treatment of his prosthetic eye, and his close relationship with his mother. Thus, it was unclear whether the child could be considered generally adoptable. (*Id*. at p. 1205.) The assessment also failed to address the prospective adoptive father's criminal history or prior contacts with child protective services, and these facts represented a serious legal impediment to adoption. (*Id*. at p. 1206.) The appellate court found there was insufficient evidence to support the adoptability finding based on all of these deficiencies in the assessment. (*Id*. at p. 1207.) As a result, the order terminating parental rights was reversed, and the case was remanded for another permanency hearing. (*Id*. at p. 1209.)

Unlike *Jerome D.*, there is sufficient evidence in the record in this case to support a finding that J.C. is generally adoptable and that the court's finding of adoptability is not based solely on the prospective adoptive parent's willingness to adopt. Also, unlike *Jerome D.*, the assessment in this case is not lacking important information about the prospective adoptive parent. Along with other pertinent information, it does include the results of a thorough screening of the prospective adoptive parent for criminal history with the California Department of Justice, the Federal Bureau of Investigation, and other pertinent state databases, as well as a search of the child abuse index. The assessment represents that the results of these screenings were negative in all respects. Father attempts to attack the results of these screenings by merely citing blacked out sections of the social worker's delivered service log, which was submitted as Attachment A to a status report prepared in anticipation of a permanency review hearing held March 5, 2008. He then speculates this indicates "there might be a problem with criminal records

in other jurisdictions." Standing alone, this is simply not enough to even suggest something is amiss in the social worker's adoption assessment that could affect the sufficiency of the evidence to support the court's adoptability finding. In any event, it was not necessary to consider any potential legal impediments to adoption by G.E. because there is substantial evidence J.C. is generally adoptable.

In sum, given the totality of evidence in the record, we must reject Father's sufficiency of the evidence claim. In our view, the juvenile court's adoptability finding is supported by substantial evidence.

DISPOSITION

The order terminating parental rights is affirmed.

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RAMIREZ
P. J.

We concur:

McKINSTER
J.

RICHLI
J.